



Replication and Purification in Identity-Based Social Movements

Citation

Alexandra Wendell, Replication and Purification in Identity-Based Social Movements (April 29, 2013).

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Introduction

In 1991, an incident at the Michigan Womyn's Music Festival set in motion a vigorous debate about the boundaries of feminist identity. The Michigan Womyn's Music Festival is an annual event creating an all-female space that is as much about politics as it is about music.¹ Although the event is popular among lesbians, it welcomes heterosexual women; men, on the other hand, are prohibited.² That year, a woman named Nancy Jean Burkholder was expelled from the festival because she was transgender.³ She was first approached by a group of festival participants, who then reported her to authorities.⁴ The festival subsequently established a "womyn-born womyn only" policy, which transgender activists protested adamantly.⁵ Supporters of the policy argued that it was necessary for maintaining the unique atmosphere of the festival to admit only individuals born with two X-chromosomes, which they believed was a necessary condition to being an authentic feminist.⁶ Opponents argued that the policy was discriminatory and itself rooted in patriarchy.⁷

It is difficult to explain the actions of the women who sought Ms. Burkholder's expulsion from the festival — and the conduct of participants in many other movements that mirror those

¹ See Michelle Tea, *Transmissions from Camp Trans*, BELIEVER, November 2003, available at www.mcsweeneys.net/articles/transmissions-from-camp-trans-2003.

² See *id.*

³ *Id.*

⁴ *Id.*

⁵ Joshua Gamson, *Messages of Exclusion: Gender, Movements, and Symbolic Boundaries*, 11 GENDER & SOC. 178, 190 (1997).

⁶ See *id.* at 191–92.

⁷ See *id.* at 191.

actions — as a rational strategy for furthering the goals of the movement. Generally, we assume that numbers are power: a movement gains strength from the population of involved participants.⁸ Why, then, would these members have wanted to exclude women who identify with the movement and are eager to contribute their energy and resources to its cause?

An identity-based social movement is the political mobilization of individuals who advocate for common reforms to the legal system⁹ based not simply on common interests, but on common identity.¹⁰ Although some identity movements have championed conservative causes, this paper focuses on movements that have advocated changes to the legal system that benefit historically oppressed groups — most significantly, but by no means limited to, the African American Civil Rights Movement, the Women’s Movement, the LGBT Rights Movement, and

⁸ See, e.g., Jonathan Matthew Smucker, *Radicals and the 99%: Core and Mass Movement*, in WE ARE MANY 247–48 (2012) (available at <http://www.beyondthechoir.org/diary/145/radicals-and-the-99-core-and-mass-movement>)

(“If [the Occupy Movement is] to effectively challenge the most powerful institutions in the world . . . , we will need the active involvement of hundreds of thousands if not millions of people”); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS* xx (Vintage Books Ed., 1979) (“[F]ormal organization presumably makes possible the coordination of the economic and political resources of large numbers of people who separately have few such resources.”).

⁹ Of course, the significant accomplishments of identity movements have not been limited to legal changes. However, this paper focuses on legal reforms, in part because they have been such a major focus of identity movements’ efforts, and in part because they are easier to conceptualize and quantify than many of the nonlegal changes that identity movements have effected.

¹⁰ See, e.g., William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2064 (2002).

the Disability Rights Movement, along with their many smaller offshoots.¹¹ In the United States, particularly in the last century, identity-based social movements have proved an extraordinarily forceful vehicle for legal and social change.¹²

But in spite of their tremendous power, identity-based movements suffer from certain devastating dysfunctions. In particular, their agendas are often largely limited to advancing the interests of their most privileged participants.¹³ And they frequently exclude a wide swath of sympathetic individuals from participating, sometimes in ways that are particularly cruel and alienating. A number of commentators have described these phenomena as they apply to specific identity movements. Most of these treatments have either described these phenomena without explaining them¹⁴ or relied on principles of human psychology to explain them.¹⁵ Others

¹¹ Professor Eskridge's article lists the African American Civil Rights Movement, the Women's Movement, and the Gay Rights Movement as the most significant identity-based movements of the last century. *Id.*; see also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (enumerating "African Americans, other people of color, and gays and lesbians" as identity-based political groups). This paper takes a somewhat broader view of the identity movements that have effected or could potentially effect major changes to the American legal system, but most of the examples nevertheless come from these foundational movements.

¹² See, e.g., Eskridge, *supra* note 10, at 2064 (arguing that the major changes in constitutional doctrine that occurred during the twentieth century are attributable to the achievements of identity movements); Crenshaw, *supra* note 10, at 1242 ("[I]dentity-based politics has been a source of strength, community, and intellectual development.").

¹³ See Crenshaw, *supra* note 10, at 1242.

¹⁴ See, e.g., *id.* at 1251–52; Darren L. Hutchinson, "Gay Rights" for "Gay Whites"? Race, Sexual Identity, and Equal Protection Discourse, 85 CORNELL L. REV. 1358 (2000).

¹⁵ See, e.g., Catherine Smith, *Unconscious Bias and "Outsider" Interest Convergence*, 40 CONN. L. REV. 1077, 1284–87 (2008) (applying unconscious bias theory to explain why different oppressed groups have trouble recognizing their common interests); Smucker, *supra* note 8, at 247–248 (2012) (*available at*

have justified the exclusionary and divisive tendencies of social movements on philosophical or strategic grounds.¹⁶

This paper takes a dramatically different approach to the problems of internal divisions and exclusionary behaviors in identity-based social movements. It hypothesizes that social inequality itself cause the interests of individual movement participants to diverge from the interests of the movement as a whole. *PART I* explores how social movements would likely constitute themselves in the absence of this social inequality. *Part I.A* concludes that they would tend to adopt an agenda that is most likely to attain the greatest possible value for their participants collectively. *Part II.B* argues that as a general matter, established members would not rationally reject the contributions of interested new participants. *PART II* reintroduces the concept of social inequality and examines how it changes the conclusions from *PART I* as they apply to identity movements in particular. *Part II.A* concludes that social inequality distorts movement agendas such that they tend to maximize movement value for the most privileged participants rather than for all participants — a phenomenon this paper refers to as “replication.” *Part II.B* concludes that replication changes the internal dynamics of identity movements such

<http://www.beyondthechoir.org/diary/145/radicals-and-the-99-core-and-mass-movement>) (“Too often, radicals play into our opponents’ divide-and-conquer strategies, by relishing in our radical identity more than we value connecting with a broader base.”).

¹⁶ See, e.g., Jane S. Schacter, *The Other Same-Sex Marriage Debate*, 84 CHI.-KENT L. REV. 379, 382–83 (2009) (explaining that the initial internal critique of same-sex marriage as an agenda priority in the LGBT Rights Movement subsided so that the movement could present a united front when facing political enemies); Gamson, *supra* note 5, at 179 (“In political systems that distribute rights and resources to groups with discernible boundaries, activists are smart to be vigilant about those boundaries . . .”). See generally *id.* at 181–82 (summarizing theories about the benefits of boundary policing for group solidarity).

that it becomes rational for established members to reject the contributions of potential new members whose interests they fear are out of alignment with their own — a phenomenon this paper refers to as “purification.”

In essence, then, social inequality distorts the incentives of identity movement participants in ways that limit the movement’s ability to change the laws and policies that disadvantage its members. Yet it is unlikely that real social movements function in exactly the way *PART II* envisions; instead, real movements probably involve a mixture of the pure models from *PART I* and *PART II*. As such, thoughtful leaders of identity movements may be able to curb the destructive effects of replication and purification, thereby cultivating healthier, more inclusive movements. *PART III* offers a few strategies that might enable them to do so.

PART I: Social Movements in a Hypothetical Nonhierarchical Society

Every social movement is, at some level, a coalition.¹⁷ Although popular treatments of social movements often assume they are monolithic¹⁸ — with uniformity of characteristics and interests across the board — even within a tight-knit organization, this assumption is unrealistic.

¹⁷ Some commentators have offered a distinction between political action that is based on coalitions between differently situated groups and political action that is not based on such coalitions. See, e.g., Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991). A basic premise of this paper is that this distinction is logically unsound. To the extent that some movements appear monolithic, it may be because they have stifled internal diversity through the mechanisms of replication and purification examined in *Parts II.A* and *II.B*.

¹⁸ See, e.g., Robert D. Benford, *An Insider’s Critique of the Social Movement Framing Perspective*, 67 SOC. INQUIRY 409, 422 (1997) (criticizing framing theory, a body of sociological research on social movements, as “treat[ing] frames in a singular fashion as though there is a *single* reality”).

Humans possess an infinite variety of characteristics, needs, and desires, so they must always compromise when joining others for collective action.¹⁹ That they still do so is a testament to the power of organization. Putting aside the fringe benefits of joining movements, such as socialization and emotional catharsis, we can assume that people would not join social movements unless they anticipated that the rewards they obtain from the movement's achievements would outweigh the costs of participation,²⁰ including the costs attributable to these inevitable compromises.²¹ That means that at the margins, individuals are deciding

¹⁹ See, e.g., MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* 8 (1965) ("Just as those who belong to an organization or a group can be presumed to have a common interest, so they obviously also have purely individual interests, different from those of the others in the organization or group"); SAMUEL R. BAGENSTOS, *LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT* 12 (2009) ("Social movements are collections of people who feel various affiliations and have a variety of motivations. The goals, strategies, and ideas of a social movement are always evolving and are always contested within the movement."); OESTREICHER, *SOLIDARITY AND FRAGMENTATION* 4–13, 32 (1986) (describing the vast diversity within the working class population that would ultimately form Detroit's early labor movement); LINDA J. WOODS, *LOOKING AT THE GAY RIGHTS AGENDA THROUGH A RACE, CLASS, AND GENDER LENS* 1–2 (1994) (discussing diversity within the LGBT Rights Movement).

²⁰ "Costs," as used in this paper, need not refer to financial costs. Social movements require a great deal of labor and social capital in addition to monetary investments. See, e.g., Marisa Holmes, *The Center Cannot Hold; A Revolution in Process*, in *WE ARE MANY* 151 (2012) (detailing the variety of efforts that went into the beginning stages of the "Occupy Wall Street" movement).

²¹ The use of the word "benefits" in this paper is emphatically not limited to financial benefits. The achievements of social movements frequently benefit their members in primarily emotional or dignitary ways, yet their members still find the costs of participation, whether monetary or not, to be justified. See OLSON, *supra* note 19, at 61 n.17. A prime example is the efforts of gay rights activists to legalize same-sex marriage even though most of the direct benefits of legalized civil marriage are not financial. But see WOODS, *supra* note 19, at 15–16 (listing financial advantages derived from legal marriage). In other instances, benefits are both financial and nonfinancial at once.

whether or not to take part in a movement not based on absolute agreement with its core objectives, but on whether they agree with *enough* of its objectives to make participation worthwhile.²²

This Part explores how social movements would define their agendas and sizes in light of the diversity of interests they must encompass — but in the absence of the preexisting social inequality that might distort these decisions. In order to do so, it must make a number of counterfactual assumptions: first, that participation in the movement has costs that are equal for all members; second, that the members are equally able to pursue the movement's goals; and third, that the members stand to benefit equally from the movement's achievements. These assumptions are false in large part because of the preexisting social and legal hierarchies that lurk in the background of every modern social movement and are especially important for identity-based movements. But by examining how movements might function in the hypothetical nonhierarchical society, we may begin to understand the effects that these hierarchies actually have.

Not included in this conception of benefits, however, are the intangible rewards that individuals derive from group membership itself. Though immensely important in understanding personal motivations for participating, these rewards are not properly characterized as achievements of the movement, but rather as byproducts of the interpersonal relationships upon which movements are based.

²² Anecdotal evidence bolsters this intuition. See, e.g., Dawn, *The Human Rights Campaign: Friend or Foe*, THE L STOP (Feb. 1, 2013), <http://thelstop.org/2013/02/the-human-rights-campaign-friend-or-foe/> (arguing that transgender individuals should support the Human Rights Campaign in spite of the organization's sometimes controversial positions on transgender issues); RONALD D. ELVING, CONFLICT AND COMPROMISE 39–40 (1995) (describing how prominent feminists eventually decided to back an early version of the Family and Medical Leave Act that did not provide for paid leave, even though the group had originally opposed such a compromise).

I.A: The Optimal Agenda

Imagine a hypothetical society with no social hierarchies but with imperfect laws. Some subset X of these laws is unfavorable to a subset Y of the population, perhaps because they have become outdated, or because the lawmakers who created them were incompetent, or for some other reason not stemming from social hierarchies. Specifically, the X laws contain laws $m-q$, which disadvantage individuals with interests $a-k$ respectively, and individuals in subpopulation Y all have at least one of the interests $a-k$. Subpopulation Y in turn falls into several equally sized smaller groups, as the chart below depicts:

Subpopulation Y				
Group 1	Group 2	Group 3	Group 4	Group 5
$a (m)$	$f (r)$	$h (t)$	$h (t)$	$a (m)$
$b (n)$	$g (s)$	$i (u)$	$b (n)$	$i (u)$
$c (o)$	$c (o)$	$c (o)$	$j (v)$	$j (v)$
$d (p)$	$d (p)$	$d (p)$	$d (p)$	$k (w)$
$e (q)$	$e (q)$	$e (q)$	$e (q)$	$e (q)$

That is, an individual with interest a is disadvantaged by law m ; an individual with interest b is disadvantaged by law n ; and so forth. Much as in human society, some interests are rare while others are more widely shared. And some pairs of groups have more in common than others.

Subpopulation Y is considering starting a social movement that will attempt to change some of the unfavorable laws — perhaps by lobbying the legislature, or by rallying voters, or by bringing strategic lawsuits, or perhaps through some combination of these tactics. The emerging movement must settle on an agenda — here, represented by the cluster of laws the movement will focus on trying to change. These groups see a social movement as a potential investment: if they are to devote time and energy to trying to change the law, they require the benefits they

derive to outweigh the costs of participation.²³ Ignore, for now, the collective action problems that systematically emerge from such arrangements;²⁴ assume that a group can bind itself and all of its members to good faith participation *ex ante*, and that the movement will only go forward if all interested groups agree. Thus, at this stage, the decision of whether or not to participate in a movement is a straightforward cost-benefit analysis at the group level.

Imagine that each group within Subpopulation *Y* would gain four units of value for every change in a law that currently disadvantages its members. It stands to reason that the more groups participate in the movement, the more likely the movement is to be successful — even without factoring in the pooling of resources that is more properly analyzed as affecting costs. This is because the larger a movement becomes, the more likely it is that its ideas will gain traction among nonparticipants and, eventually, mainstream acceptance. When ideas gain independent momentum, they may begin to influence the legislators, judges, and other public and private actors who ultimately decide whether to change the targeted laws. Suppose, then, that if only one group participates in the movement, the chance of success is only 35%, but that the probability increases by 10% for each additional participating group.²⁵ Thus, the expected benefit of a movement to a given group can be represented by the equation:

$$B_{gl} = (.1g + .25) * 4l$$

²³ See, e.g., GARY S. BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 5 (1976). Although rational choice theory is somewhat limited in its application to social movements, it serves as a useful starting point for analyzing how a movement might constitute its agenda and membership.

²⁴ This paper discusses those collective action problems at *infra* pages 17–19.

²⁵ These numbers are intended to represent very rough estimates and are only presented for the purpose of making more concrete the abstract concepts that this Section discusses.

where g equals the number of participating groups and l equals the number of targeted laws that affect the group in question. The gross benefits to participating groups are equal to the sum of the B functions of each participating group. The gross social utility of a movement can be calculated simply by adding together the B functions of each *benefiting* group. Although it is interesting to note how valuable a movement is for Subpopulation Y as a whole, the benefits for participating groups are more important in understanding whether or not a movement will go forward and who will participate.

Further, it stands to reason that the more laws a movement targets, the more costly it will be, but that the movement can also achieve certain efficiencies by targeting multiple laws. In order to target its first law, the movement must invest in research, tools, and other basic infrastructure.²⁶ After those initial investments have been made, the incremental costs of adding a new law to fight against will likely be smaller. If, for instance, the cost of fighting the first law is 10, after which each additional law costs 4, then the cost to the movement as a function of the number of laws targeted can be represented by the equation:

$$C_l = 4l + 6$$

where C equals total cost and l equals the number of laws the movement targets for change. If the participating groups share equally in this total cost, then the cost for each Group will simply be the function above divided by the number of Groups participating. A Group will only agree to participate in the movement if its expected benefits exceed its costs. Finally, a movement's total social utility can be calculated by subtracting the total costs from the gross social benefits.

²⁶ See OLSON, *supra* note 19, at 22. Costs may also begin increasing more rapidly again if the size of the agenda increases beyond a certain point. *Id.* If, for instance, a movement chooses a goal that is unrealistic in scope, such as, say, overthrowing capitalism, the cost formula in this paper will provide an underestimation of its actual costs. Assume, for simplicity, that none of the movements discussed here have such unrealistic ambitions.

Under these assumptions, different agenda clusters correspond with different group-level expected benefits and total social utility for Subpopulation *Y*. The chart below portrays the most promising of these potential movements.

Cost, Benefits, and Social Utility of Potential Movements

Laws targeted for change	Participating groups	Benefits – Costs for all participating groups	Positive Externalities	Total Social Utility
<i>q</i> only	All 5 groups	5, or 1 per group (Benefits = 15; Costs = 10)	0	5
<i>p</i> and <i>q</i>	Groups 1, 2, 3, and 4	6.8, or 1.7 per group (Benefits = 20.8; Costs = 14).	2.6 (Group 5 will benefit if law <i>q</i> is changed.)	9.4
<i>o</i> , <i>p</i> , and <i>q</i>	Groups 1, 2, 3, and 4	10.6 (Benefits = 28.6; Costs = 18). Groups 1, 2, and 3 gain 3.3 each. Group 4 only gains .7.	2.6 (Group 5 will benefit if law <i>q</i> is changed.)	13.2
<i>n</i> , <i>o</i> , <i>p</i> , and <i>q</i>	Groups 1, 2, 3, and 4	11.8 (Benefits = 33.8; Costs = 22.) Group 1 gains 4.9. Groups 2, 3, and 4 gain 2.3 each.)	2.6 (Group 5 will benefit if law <i>q</i> is changed.)	14.4
<i>m</i> , <i>n</i> , <i>o</i> , <i>p</i> , and <i>q</i>	All 5 groups	22 (Benefits = 48; Costs = 26.) Group 1 gains 9.8. Groups 2, 3, and 4 gain 3.8 each. Group 5 gains only .8.	0	22
<i>m</i> , <i>n</i> , <i>o</i> , <i>p</i> , <i>q</i> , and <i>t</i>	Groups 1, 2, 3, and 4	9 (Benefits = 39; Costs = 30.) Group 1 gains 5.5. Group 3 gains 2.9. Groups 2 and 4 gain only .3.	5.2 (Group 5 will benefit if law <i>m</i> or law <i>q</i> is changed.)	14.2

Under this set of assumptions, a movement targeting laws m , n , o , p , and q would be the most valuable to member groups (as well as the most valuable to Subpopulation Y as a whole). At first glance, it also appears to be the most likely to actually occur in a world of rational actors. Although Group 1 stands to benefit the most from the movement, Groups 2, 3, and 4 benefit more than they would from any other movement. All this depends on the cooperation of Group 5, however, which enjoys a great deal of leverage in this scenario in spite of its seemingly marginal status.²⁷ Group 5 expects to gain only .8 units of value in the $m-n-o-p-q$ movement. If Group 5 refuses to join, the movement's probability of success will go down, and fewer groups must share the same total cost, such that Groups 2, 3, and 4 will expect to gain only 1.3 units each. Groups 2 and 3 will then prefer to target only laws o , p , and q , since the $o-p-q$ movement is worth 3.3 units to them. The $o-p-q$ movement is better for Group 5 as well, since it expects to gain more from free riding on $o-p-q$ than it would gain from participating in $m-n-o-p-q$. Group 5 thus has a powerful incentive to hold out from $m-n-o-p-q$, and the other groups will likely be forced to offer it valuable perks in exchange for its participation. In a frictionless world, such negotiation presents no barrier to efficient outcomes.²⁸ In the real world of identity politics, however, it can create problematic power dynamics within a movement, some of which we will return to in *Part II*. Nonetheless, in the hypothetical egalitarian society of Subpopulation Y , Groups 1–4 can be expected to succeed in enticing Group 5 to participate in the movement that maximizes the value of the collective action.

²⁷ Cf. OLSON, *supra* note 19, at 35 (describing “a surprising tendency for the ‘exploitation’ of the great by the small” in organizations with unequal degrees of motivation among participants).

²⁸ See generally Ronald Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

Note, also, that a vast number of additional movements targeting some of the unfavorable laws could be conceived, but most are not included on the chart because no group would rationally partake in them. One might think that a movement targeting laws v and q , for instance, would be a sensible, modest goal for Groups 4 and 5. This might appear especially desirable if the other three groups were for some reason not willing or able to organize with Groups 4 and 5. But this movement would never get off the ground, as the cost to each group would be 7 units while the expected benefit would be only 3.6. Of course, this disparity can be attributed in part to the assumption of large startup costs represented by the constant 6 in the cost formula, and this assumption may be incorrect. But even if the cost formula is wildly inaccurate, it is uncontroversial that new identity-based movements face significant barriers to formation.²⁹ It follows that any number of human characteristics could form the basis of identity movements but for these costs, and that the current nonexistence of these movements does not indicate that they are not compelling or that they might not become valuable in the future if conditions change.

In spite of its somewhat arbitrary assumptions (hereinafter referred to as the “*PART I* assumptions”), the chart thus makes a number of interesting suggestions about how social movements might work. First and foremost, the analysis indicates that if different member groups have equal power within an organization, they will seek to maximize the value of the organization for the participants as a whole. That is the case even though different participants in a movement derive different levels of benefit from the movement, even if that fact affects the internal dynamics of the movement. This analysis also highlights the choice that some potential

²⁹ See, e.g., OLSON, *supra* note 19, at 22 (“[I]n virtually all cases [of collective political action] there will be significant initial or fixed costs.”); OESTREICHER, *supra* note 19, at 60–67 (describing the difficulty of building consensus among groups with competing interests); JENNIFER GORDON, SUBURBAN SWEATSHOPS 70–71 (2005) (describing the barriers to organization for a group of immigrant workers, many undocumented).

members face between participation and free riding — or, to look instead at the silver lining, the beneficial positive externalities that social movements may sometimes bestow upon nonparticipants.³⁰ It also suggests (at least as an initial matter) that if probability of success increases as participation increases, and that if participants can share the costs of their joint effort, we should expect committed participants to be interested in *increasing* the size of the movement, not limiting it. That they often strive to limit membership instead indicates that additional factors must be complicating these members' motivations.

I.B: The Optimal Size

Just as a social movement can optimize its agenda, we can also speak of a movement's optimal size — the precise level of membership at which adding more participants would result in a decrease in overall value due to increased costs, decreased benefits, or both. Of course, as the foregoing discussion suggests, it is conceivable that some social movements might have no optimal size at all, in that the more members join, the more value the movement can create, and that there is no limit to this principle. Perhaps this idea is not so farfetched; after all (at least in the counterfactual world without social inequality) the government actors entrusted with making and changing the laws are politically accountable to all of their constituents. It stands to reason that a government representative may be able to ignore a movement that has only a few members, but that the more her constituents identify with the movement, the more she will be forced to pay attention. Similarly, important market actors may be unable to ignore a movement

³⁰ Social movements can have negative externalities as well, of course. In our example, individuals who currently benefit from laws $m-q$ stand to incur losses if any of Subpopulation Y 's potential movements is successful.

large enough to have an effect on their bottom lines.³¹ Considering the high degree to which movement value grew as groups joined in the previous section's model, it appears as though countervailing factors would have to be fairly compelling in order to outweigh this tendency. Several such factors may exist, however, and they are worth exploring.

One way in which increasing the size of a social movement might decrease its value is that as membership grows, movements may become more prone to inefficiencies. There are a number of sources of inefficiency in organizations, and many of them tend to worsen as organizations increase in size. For instance, large organizations often suffer from agency problems, in which individuals are entrusted with acting in the interest of the organization but instead act in their own interest or that of some other party.³² And as a movement grows, it may also be forced to allocate an increasing portion of its resources to organizing and supporting the roles and contributions of its members, and it may exploit members' resources and talents in a less productive manner.³³

Whereas the cost formula in the model displayed in the previous section assumed that the cost of a movement would grow only in proportion to the ambition of its agenda, the foregoing considerations suggest that costs might also increase in proportion to the number of members taking part in the movement. However, as that model also portrayed, movements also tend to benefit greatly from increased membership: they are more likely to be successful, and as costs

³¹ Cf. GORDON, *supra* note 29, at 70 (lamenting that the 500-person membership of the Workplace Project did not "begin to approach the power needed to have significant impact in a labor market the size of Long Island's").

³² See generally Susan P. Shapiro, *Agency Theory*, 31 ANN. REV. SOC. 263 (2005) (summarizing basic agency theory and reflecting on its merits).

³³ See, e.g., GEORG SIMMEL, THE SOCIOLOGY OF GEORG SIMMEL 92 (Kurt H. Wolff trans., 1950) (arguing that small groups can use their resources more effectively than large groups).

grow, participants can share them such that each member bears a lighter burden. In order to outweigh these beneficial effects, costs would have to increase *exponentially* as movement participation grows.³⁴ Though the inefficiencies caused by growth in membership may be substantial, it seems very unlikely that they grow exponentially, at least as a systematic matter. One reason is simply that a number of very large movements exist, and many of these movements have enjoyed a great deal of success. Millions of people participated in the Black Civil Rights Movement in the mid-twentieth century, and its structure was extremely complex.³⁵ Currently, the LGBT Rights Movement is similar in its enormous membership and multifaceted structure.³⁶ These movements would not have grown to such a scale and achieved such great success if the costs of a large movement were truly prohibitive. That organizational costs are *sometimes* prohibitive may simply indicate that some movements fail to organize in a way that can efficiently incorporate large-scale participation, though it would be in their interest to do so.

Even if growth in a movement necessarily raises costs such that they will eventually grow faster than benefits in proportion to new active members, this consideration does not necessarily weigh in any *absolute* sense against inclusion of additional members over the efficient level.

³⁴ Benefits grow exponentially as a movement grows because both the probability of success and the number of people benefiting from the movement's success rise as a function of movement size. Probability and the number of people benefiting are multiplied together to determine total social welfare. Thus, in order to cancel out the increase as a function of group size on the benefits side of the equation, the costs side of the equation would need to feature that same variable raised to the power of two.

³⁵ See generally ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT* (1984); Belinda Robnett, *African-American Women in the Civil Rights Movement, 1954–1965: Gender, Leadership, and Micromobilization*, 101 AM. J. SOC. 1661 (1996).

³⁶ See generally DUDLEY CLENDINEN & ADAM NAGOURNEY, *OUT FOR GOOD* (1999).

Newcomers can be allowed to play bit parts that require little guidance or organization: they can donate money, voice public support for the cause, or perform simple manual tasks like photocopying and hanging banners. Alternatively, newcomers can start sister organizations in different regions or with different but complementary goals or strategies. The possibility of inefficiencies therefore does not rule out growth beyond a fixed size. At most, it weighs against a certain type of growth but leaves open other possibilities for expansion.

Increased membership in a social movement may also lead to one very specific type of cost increase: it may require participants to devote time and energy to internal policing that they would otherwise be able to devote directly to advancing the movement's goals. One of the most important sources of this need for internal policing is the collective action problem that inevitably arises from joint political activity. In the seminal 1965 book *The Logic of Collective Action*, Professor Mancur Olson argues that when an organization like a social movement strives to produce a public good, individuals will not rationally participate unless they are somehow rewarded for doing so or punished for declining to do so.³⁷ Without some influential factor apart from the potential benefits they will enjoy if the movement is successful, individuals have no incentive to actively participate rather than simply taking a free ride — reaping the benefits of the movement's achievements without sharing in its costs.³⁸ Professor Olson argues that these collective action costs increase as an organization grows³⁹ and that large organizations must devise some way to account for them in order to thrive.⁴⁰ Subsequent scholars have modified the

³⁷ OLSON, *supra* note 19, at 15–16; *see also* GORDON, *supra* note 29, at 114 (describing the free-rider problems that interfered with individual incentives to participate in the Workplace Project).

³⁸ OLSON, *supra* note 19, at 12–13, 21.

³⁹ *See id.* at 53.

⁴⁰ *See id.* at 132–67.

work's conclusions and expanded on the ways in which large groups might curtail collective action problems.⁴¹

Professor Olson's thesis, however, does not actually explain exclusionary behavior. To the contrary, it demonstrates that if a movement has expansive goals, it requires many active members, and that providing benefits to non-contributors is counterproductive. When a movement rejects willing participants, it *exacerbates* its free-rider problem, as these individuals will presumably still benefit from the movement's achievements, but they will not have been permitted to contribute toward those achievements, thus raising costs for members. Put differently, Olson's account assumes that an individual's incentive is to reap the benefits of collective action without participating and that an organization's incentive is to induce individual participation.⁴² Exclusionary behavior inverts this relationship and thus appears plainly irrational under Olson's assumptions. Moreover, it stands to reason that inactive participation may still be better than no participation at all. Individuals who identify with a movement but do not actually take part in its political activities are still likely to vote with the movement and take other passive but marginally helpful actions. Attempts to prevent these individuals from identifying with the movement at all could potentially backfire, as these individuals could become bitter and actually take actions *against* their own interests in order to retaliate.

Finally, some movements may wish to limit participation in order to prevent new members from shifting the movement's agenda. In the model from the previous section, for example, Groups 1, 2, and 3 are interested in changing laws *o*, *p*, and *q*. Suppose that they form

⁴¹ See generally Lars Udén, *Twenty-Five Years with "The Logic of Collective Action,"* 36 ACTA SOCIOLOGICA 239 (1993). Many of these scholars have challenged Olson's conclusion that the organization characteristics that cause collective action problems are necessarily correlated with an organization's size. *Id.* at 241.

⁴² See OLSON, *supra* note 19, at 37.

a social movement in order to change all three of these laws, but that law *o* imposes the most significant burden on them and is therefore their highest priority. Suppose, also, that Group 4 has expressed interest in joining their movement. Group 4 does not share the other groups' interest in changing law *o*, but only in changing laws *p* and *q*. Thus, if it takes part in the movement, Group 4 can be expected to pursue changes to laws *p* and *q* more vigorously than it pursues changes to law *o*. Under the *PART I* assumptions, this is not a problem: Group 4's efforts will not detract from those of Groups 1, 2, and 3, and the original groups will obtain some benefit from those efforts, even if these benefits are less valuable to them. Initially, there is no reason to assume that the movement's agenda cannot simply grow as membership grows.

However, a few variations on the *PART I* assumptions may make Group 4's differing set of interests more problematic for the original three groups. One potential problem could arise if the potential new members are not merely indifferent to changes in law *o*, but are affirmatively opposed to such changes. Then, Groups 1, 2, and 3 might fear that while working toward changes in laws *p* and *q*, the members of Group 4 will simultaneously attempt to undermine their efforts to change law *o*. Similarly, Groups 1, 2, and 3 might fear that although Group 4 claims to be interested in changing law *o*, its members are in fact interested in joining the movement only in order to sabotage it from within.⁴³

Although these scenarios are certainly troublesome, whether they represent realistic threats is another matter.⁴⁴ Most accounts suggest that opponents of social movements are more

⁴³ See Gary T. Marx, *Thoughts on a Neglected Category of Social Movement Participant: The Agent Provocateur and the Informant*, 80 AM. J. SOC. 402, 403 (1974).

⁴⁴ To be sure, different groups within an identity community do sometimes have interests that are at odds. Commentators have observed, for instance, that although Black women would likely benefit from a dialogue about domestic violence within the Black community, this dialogue is silenced due to fears that it will reinforce the

likely to work against them from the outside than to attempt to infiltrate them.⁴⁵ Defending the status quo is generally understood to be easier than changing it, and as such, the channels through which opponents of a social movement can work are more plentiful and accessible than the channels through which the movement itself can operate.⁴⁶ The sabotage strategy limits these opponents to the more expensive channels to which the movement is restricted. That strategy thereby converts what would be an advantageous situation for the opponent of the movement into a competition of equals. And even if such infiltration does sometimes occur, it is likely too unusual and well disguised to justify significant efforts on the part of the movement to police its membership for the occasional mole.

A perhaps more realistic impulse to limit social movement participation might arise if Groups 1, 2, and 3 believe that there is a limited pool of available benefits, such that if changing law *o* is their highest priority, it is actually important to prevent changes in laws *p* and *q*. Assume, for example, that the only way laws *o*, *p*, and *q* can be changed is through legislation, and that the relevant legislature has committed to only reconsider one of the three laws over the next five years. If changing law *o* is the most valuable goal for Groups 1, 2, and 3, they might

stereotype that Black men are violent. See Crenshaw, *supra* note 10, at 1252–53. But it is important not to conflate *community* with *movement*: the individuals who oppose discussions about domestic violence are unlikely to join an organization devoted to advancing Black feminism, and vice versa, even though both groups might be considered part of the Black community.

⁴⁵ See, e.g., Melissa Murray, *Marriage Rights and Parental Rights: Parents, the State, and Proposition 8*, 5 STAN. J. C.R. & C.L. 357, 359 (2009) (discussing the tactics of the campaign supporting Proposition 8, which outlawed same-sex marriage in California).

⁴⁶ See generally Emily Brissette & Mike King, *Overcoming Internal Pacification*, in WE ARE MANY 193 (2012) (discussing the many ways in which even a very undesirable status quo can be maintained).

wish to focus their energies exclusively on law *o* and even oppose changes to *p* and *q*. In this case, including Group 4 in the movement would be counterproductive for the other three groups; despite appearances to the contrary, their interests are at odds.

Such hard limits on legal change would be highly unusual, of course, but members of a social movement often have reason to believe that, as a practical matter, their cumulative efforts will have diminishing returns. They may decide to limit participation based on a belief that such limitation is the best way to get a limited pool of benefits distributed to the neediest or most deserving beneficiaries. Another variation on this theme that is especially prominent in the identity-movement context is the idea that the general public's patience for progressive ideas, though not a quantifiable good as such, is in some ways limited. Separate, sequential movements — and separate, sequential strands of the same movement — have a complex relationship. Although in some situations, the achievements of a previous movement can lay the groundwork for a successor, at other times, some have theorized that the earlier movements have instead fatigued the public's attention span and caused society to be less receptive to the successor's efforts.⁴⁷

But again, the story is more complicated, as attempts to limit the size of a movement in order to allocate scarce resources efficiently can backfire. Introducing the concept of boundaries

⁴⁷ See BAGENSTOS, *supra* note 19, at 28 (hypothesizing that the successes of the Civil Rights Movement during the 1970s caused the public to be less receptive to the efforts of the Disability Rights Movement in the 1980s). In another example, suffrage activist Elizabeth Cady Stanton, writing about the passage of the Fifteenth Amendment, which guaranteed the right to vote regardless of race but not regardless of sex, stated:

[T]he very elect were in favor of negro suffrage first, woman suffrage afterwards, which meant the postponement of the latter question for another generation. The few who had the prescience to see the long years of apathy that always follow a great conflict, strained every nerve to settle the broad question of suffrage on its true basis while the people were awake to its importance

ELIZABETH CADY STANTON ET AL., HISTORY OF WOMAN SUFFRAGE, VOL. II 367–68 (1881).

to an identity movement has reverberating effects that may ultimately harm the very individuals who first promoted it. That is because at some point, the determination of membership will likely fall into the hands of an outsider, such as a legislator or a judge, putting insiders' own access to benefits at risk. In the Disability Rights Movement context, for instance, many early proponents of disability rights laws favored narrow protection in order to conserve resources for the neediest in the disability community.⁴⁸ Later, those same advocates were unhappy when judges interpreted the statutory definition of disability more narrowly than they had envisioned.⁴⁹ There is also an idea among some that by drawing bright lines between members and nonmembers, boundary policing can serve to essentialize the identity trait, thereby reinforcing the very harmful stereotypes that the movement may intend to challenge.⁵⁰

At best, excluding individuals from a movement out of fear that they will hijack its agenda appears to have uncertain rewards. It is frequently unclear to what extent resources are actually limited; the successful achievement of one goal might open doors for the second goal rather than closing them, a consideration that weighs against strict prioritization. And pursuing multiple goals at the same time may be a good technique for “diversifying” a movement’s risk.⁵¹ After all, in the real world, the chance that any given political goal can be achieved is often extraordinarily uncertain. In light of this uncertainty, it seems quite reckless to alienate

⁴⁸ See BAGENSTOS, *supra* note 19, at 20–21.

⁴⁹ See *id.* at 46–47.

⁵⁰ See *id.* at 49–51. To be sure, this argument may prove too much, undermining the entire enterprise of identity-based politics. See Crenshaw, *supra* note 10, at 1242 (describing identity-based politics as “in tension with dominant conceptions of social justice”).

⁵¹ Cf. ROBERT L. HAGIN, INVESTMENT MANAGEMENT 44 (2004) (discussing diversification of stock market portfolios).

presumptive allies on the basis of relatively minor disagreements. And finally, excluding these potential new members provides no guarantee that they will not simply form a separate movement and continue to compete for the same limited pool of resources through similar strategies and channels. Inclusion in the original movement at least presents the opportunity of monitoring the newcomers' actions and attempting to persuade them that the original goals are important and worthwhile.

Thus, if social movements function in a manner roughly resembling the model from the previous section, exclusionary behavior is difficult to understand. Although growth in an organization may sometimes lead to inefficiencies, these inefficiencies seem unlikely to ever outweigh the advantages a movement gains from increasing its membership. Moreover, when a movement seeks to provide a public good, individual rational actors have an incentive to free ride rather than participate, and organizations must generally take affirmative strides to curb this tendency. In light of these considerations, actively excluding willing participants appears not just unnecessary, but counter to the interests of the organization. Nor does the idea of a limited pool of benefits seem like a promising explanation of most exclusionary behavior. Thus, although most people probably imagine that social movements function in a manner that approximately reflects the *PART I* assumptions, it appears that a good deal of individual behavior is at odds with that model. Perhaps psychological or philosophical theories really do account for this behavior. Or perhaps, instead, the incongruities explored in the foregoing discussion indicate that identity movements do not in fact function as the model assumes.

PART II: The Effects of Social Inequalities on the Identity Movements that Seek to Change Them

The entire premise of *PART I* — that social movements operate in a world devoid of social hierarchies — is, of course, false. The existence of socially differentiated groups, and the dominance of some of those groups over others, is likely as old as human history.⁵² In essence, dominant groups are distinguished by their possession of a disproportionately large share of positive social value, both material and symbolic.⁵³ This system of unequal power is reinforced through individual discrimination, legal and institutional discrimination, culturally embedded myths, and individual internalization of societal roles.⁵⁴ Although the axes of social domination and oppression have varied historically and geographically and may even be unlimited,⁵⁵ a number of particularly well-documented systems are widely recognized in the modern era by their “isms”: racism,⁵⁶ sexism,⁵⁷ classism,⁵⁸ heterosexism,⁵⁹ and ableism.⁶⁰ The law plays a

⁵² See JIM SIDANIUS & FELICIA PRATTO, *SOCIAL DOMINANCE* 38 (1999) (“Most forms of group conflict and oppression (e.g., racism, ethnocentrism, sexism, nationalism, classism, regionalism) can be regarded as different manifestations of the same basic human predisposition to form group-based social hierarchies.”).

⁵³ See generally Deana A. Rohlinger, *Privilege*, in *BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY* (2007); Pierre Bourdieu, *Cultural Reproduction and Social Reproduction*, in *KNOWLEDGE, EDUCATION, AND CULTURAL CHANGE* 71 (1973) (introducing the concept of “cultural capital”).

⁵⁴ See SIDANIUS & PRATTO, *supra* note 52, at 39–49 (providing an overview of the instrumentalities through which social inequality is preserved); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 277–288 (2d ed. 2000) (categorizing the many methods dominant groups employ to maintain their status as structural, disciplinary, hegemonic, and interpersonal).

⁵⁵ See SIDANIUS & PRATTO, *supra* note 52, at 38.

⁵⁶ See Pierre L. van den Berghe, *Racism*, in *BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY* (2007).

⁵⁷ See Amy Lind, *Sexism*, in *BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY* (2007).

⁵⁸ See BARBARA JENSEN, *READING CLASSES* 21 (2012).

powerful role not only in entrenching these systems of oppression but also, frequently, in counteracting them.⁶¹

Social hierarchies and their effects permeate human action, so it stands to reason that all social movements are in some way affected by them.⁶² But as phenomena that are defined by social inequality and that seek to change the patterns of benefits and burdens that flow from it, identity movements are uniquely situated within our system of social hierarchies. Rather than being organized around the contextual interests of their participants, these movements are predicated on personal characteristics that form a part of the members' identities. These characteristics are themselves invested with different levels of practical and symbolic value.⁶³ Identity movements, at the same time as they fight against the system of valued identities, are forced to trade in those same identity-based currencies. The remainder of this paper explores the effects that this inevitable philosophical dissonance has on movement dynamics.

⁵⁹ See Barry D. Adam, *Homophobia and Heterosexism*, in BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (2007).

⁶⁰ See FIONA KUMARI CAMPBELL, *CONTOURS OF ABLEISM* 5 (2009); see also MICHAEL L. PERLIN, *THE HIDDEN PREJUDICE* 21–22 (2000) (referring to discrimination against individuals with mental and psychological disabilities as “sanism”).

⁶¹ See COLLINS, *supra* note 54, at 277–80.

⁶² An analysis of the effects of social inequalities on social movements writ large is outside the scope of this paper. However, it seems likely that its conclusions apply to many social movements that do not fit the definition of identity movements. For example, some commentators have observed that the Occupy Wall Street movement has privileged white, middle-class perspectives. See, e.g., Joel Olson, *Whiteness and the 99%*, in *WE ARE MANY* 46, 46–47 (2012).

⁶³ See, e.g., Nancy Leong, *Racial Capital*, 126 HARV. L. REV. ____ (forthcoming 2013) (manuscript at 8–25) (summarizing literature that conceptualizes racial identities as possessing economic, legal, or cultural value).

II.A: Replication

As commentators in the fields of law and sociology have frequently lamented, in spite of the strides identity movements have made in bringing about greater social equality, these achievements have repeatedly failed to address the cross-cutting statuses of their participants and the ways in which internal inequalities might affect the dynamics of identity groups. Professor Patricia Hill Collins has coined the phrase “matrix of domination” to capture the compounding effects of the various types of social inequality on individuals who identify with multiple oppressed groups.⁶⁴ Professor Kimberlé Crenshaw has highlighted the tendency of identity movements to marginalize the experiences of those participants who, as she puts it, exist at the “intersectionalities” of race, gender, and other axes of inequality.⁶⁵ But scholars have not yet proposed a theory for how these internal inequalities come into being in the first place. This paper introduces the concept of *replication*: the process by which, rather than seeking to maximize its value for all participants, a movement adopts mainstream values and hierarchies in all respects that are unrelated to the identity characteristic around which it is organized.

The existence of differently situated participants within an identity movement might itself distort the movement’s agenda as compared with the optimal agenda theorized in *PART I* of this paper. The higher an individual’s status in mainstream social hierarchies, the greater her ability to effect social and legal change. Privileged individuals have easier access to courtrooms,

⁶⁴ See COLLINS, *supra* note 54, at 227–28.

⁶⁵ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140; Crenshaw, *supra* note 10, at 1245.

statehouses, and boardrooms.⁶⁶ They are more likely to have personal connections to powerful decisionmakers.⁶⁷ They are more likely to have the means to fund ambitious reform campaigns.⁶⁸ They have a disproportionately large influence on their elected representatives.⁶⁹ They are often better able to craft their arguments in ways that appeal to mainstream sensibilities.⁷⁰ They suffer fewer day-to-day pressures and are therefore able to devote more time and energy to the movement.⁷¹ They will likely experience less retaliation for acts of civil

⁶⁶ See, e.g., Stephen B. Bright, *Legal Representation for the Poor: Can Society Afford This Much Injustice?*, 75 Mo. L. Rev. 683, 683–84 (2010) (discussing disparities in attorney representation); Michael B. Dorff, *Confident Uncertainty, Excessive Compensation and the Obama Plan*, 85 IND. L.J. 491, 522 (“The upper echelons of the corporate world are remarkably homogeneous. Board members and senior executives in Fortune 500 companies are overwhelmingly white and male.”).

⁶⁷ See, e.g., WOODS, *supra* note 19, at 3 n.3.

⁶⁸ For example, race and gender are strongly correlated with income. See *Table 701: Median Income of People in Constant (2009) Dollars by Sex, Race, and Hispanic Origin: 1990 to 2009*, UNITED STATES CENSUS BUREAU, <http://www.census.gov/compendia/statab/2012/tables/12s0701.pdf> (last visited December 7, 2012).

⁶⁹ See LARRY M. BARTELS, *UNEQUAL DEMOCRACY* 253–54 (2008) (using data on Senate voting patterns to demonstrate that elected officials are far more responsive to wealthy constituents than to those of “modest means”).

⁷⁰ Cf. Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1367 (1988) (“People can only demand change in ways that reflect the logic of the institutions that they are challenging. Demands for change that do not reflect the institutional logic—that is, demands that do not engage and subsequently reinforce the dominant ideology—will probably be ineffective.”).

⁷¹ See, e.g., Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 431 (1995) (stating that women were less involved in the Workplace Project in part because they “carry the double load of working outside the home and keeping the family together, leaving them too exhausted to take on other responsibilities.”).

disobedience.⁷² And because members of oppressed identity groups are themselves not immune to the pervasive influences of social inequality, the groups themselves are likely to place the greatest value on the contributions of the most privileged participants, even if subconsciously. For these and myriad other reasons, the participants of an identity movement who otherwise identify with privileged social groups have on average a disproportionate influence on the movement's agenda.

Imagine returning to Subpopulation *Y*, but with a few changes that represent the effects of social hierarchies on the organization of potential movements. Groups 1–5 still have a variety of interests, some overlapping, that are affected by laws *m–v*. But now, instead of interest *k*, Group 5 has an “*x* factor”: a special characteristic that gives its members unique access to the channels of legal change.

Subpopulation <i>Y</i>				
Group 1	Group 2	Group 3	Group 4	Group 5
<i>a (m)</i>	<i>f (r)</i>	<i>h (t)</i>	<i>h (t)</i>	<i>x</i>
<i>b (n)</i>	<i>g (s)</i>	<i>i (u)</i>	<i>b (n)</i>	<i>a (m)</i>
<i>c (o)</i>	<i>c (o)</i>	<i>c (o)</i>	<i>j (v)</i>	<i>i (u)</i>
<i>d (p)</i>	<i>d (p)</i>	<i>d (p)</i>	<i>d (p)</i>	<i>j (v)</i>
<i>e (q)</i>	<i>e (q)</i>	<i>e (q)</i>	<i>e (q)</i>	<i>e (q)</i>

In *PART I*'s model, the probability of success of a movement was a function of the number of groups participating. Here, in contrast, because of Group 5's special characteristic *x*, suppose that the only factor that affects the probability of a movement's success is whether or not Group 5 participates. If it does, the movement will gain access to the instrumentalities of change and will therefore have an 80% chance of achieving its goals. If it does not, the other groups may still form a movement, but they will be confined to highly suboptimal strategies, so their probability of success will be only 20%.

⁷² See GORDON, *supra* note 29, at 89 (citing fear of deportation and other retaliation as one factor that makes organizing immigrant workforces difficult).

In all other ways, costs and benefits are calculated as before. With only this single change from the default assumptions in *PART I*, the landscape of potential movements changes dramatically, as depicted in the chart below:

Cost, Benefits, and Social Utility of Potential Movements

Laws targeted for change	Net Benefits for Group 5	Net Benefits for Groups 1–4	Total Net Benefits	Total Social Utility
<i>q</i> only	1.2	4.8 (1.2 each)	6	6
<i>v</i> and <i>q</i> (results for <i>u</i> and <i>q</i> similar)	3.6	4.8 (3.6 for Group 4; .4 for Groups 1–3)	8.4	8.4
<i>m</i> , <i>u</i> , <i>v</i> , and <i>q</i>	7.3	2.7 (.9 for Groups 1, 3, and 4; Group 2 will not participate)	10	13.2 (Group 2 benefits from public good)
<i>n</i> , <i>o</i> , <i>p</i> , and <i>q</i>	Group 5 will not participate, as costs outweigh benefits.	Groups 1 – 4 will also not participate, as costs outweigh benefits once the probability of success is adjusted to 20%.	0	0
<i>m</i> , <i>n</i> , <i>o</i> , <i>p</i> , and <i>q</i>	1.2	24 (10.8 for Group 1; 4.4 for Groups 2 – 4)	23.2	23.2

Unlike under the assumptions in *PART I*, the movement that maximizes value to all participants is no longer the movement that is most likely to actually occur. That is because the other groups are dependent on Group 5 for the success of the movement, so Group 5 enjoys disproportionate bargaining power. Whereas Group 5's refusal to participate would devastate the movement, no other group possesses that degree of leverage, as a movement could function without their participation, and their contributions are essentially fungible. This situation tends to favor movements that are optimal for Group 5, while they need only be marginally worthy of investment for the other groups. Thus, even though a movement targeting laws *m*, *n*, *o*, *p*, and *q* would maximize value for Subpopulation *Y* as a whole, a movement targeting laws *m*, *u*, *v*, and *q*

is more likely to materialize. It is also worth noting that a movement targeting laws n , o , p , and q , which conferred the second-greatest benefits on its participants under the *PART I* assumptions, would never even get off the ground under the assumptions of this Part.

A potential objection to these conclusions is: why cannot Groups 1–4 simply pool their resources and pay Group 5 the difference between the value it would derive from movement m - u - v - q and the value it would derive from movement m - n - o - p - q in exchange for its participation in the latter movement, thereby obtaining the socially optimal outcome? This strategy would be very risky for Groups 1–4. Whereas under the *PART I* assumptions, participating groups worked toward the movement’s goals in a completely collaborative manner, here Group 5 alone is entrusted with communicating the movement’s message to the public or to lawmakers. In other words, it serves as an agent of the movement as a whole.⁷³ Any delegation runs the risk that the agent will shirk her duty, but that concern is especially prevalent where, as here, it is difficult for the principle to measure performance and discipline shirking, and where the agent’s own preferences are out of alignment with the principal’s preferences.⁷⁴ There is a great risk that after signing on to promote the m - n - o - p - q agenda and accepting the contributions of Groups 1–4, Group 5 will use the movement’s resources to promote the m - u - v - q agenda instead. For one thing, Group 5 can advocate changes in laws m and q zealously while devoting to laws n , o , and p only the bare minimum effort necessary to appease the other groups. It can then secretly divert movement resources to a nominally separate effort to change laws u and v . This behavior would be quite difficult for Groups 1–4 to police. And even if Groups 1–4 are aware of Group 5’s shirking, because of their bargaining disadvantages, they have little ability to discipline Group 5

⁷³ See Shapiro, *supra* note 32, at 264–65.

⁷⁴ See *id.* at 266.

without inflicting collateral harm on the movement. Thus, although we will return to the possibility of induced participation in *PART III*, it is unlikely to be fruitful in the run of cases.

This explanation for Group 5's disproportionate influence on the movement's agenda relies only on the privileged access to the instruments of legal change that Group 5 enjoys outside the movement. In real identity movements, to the extent that participants have internalized mainstream social hierarchies, such favored groups also benefit from privileged social status *within* the subpopulation in which the movement originates. Commentators have observed, for example, that the Black community has historically accorded greater social status to men than to women,⁷⁵ to heterosexuals than to LGBT individuals,⁷⁶ and sometimes to working- to upper-class Blacks than to very poor Blacks,⁷⁷ even outside the context of political activity. Observations of the LGBT community⁷⁸ and other minority communities⁷⁹ echo these

⁷⁵ See COLLINS, *supra* note 54, at 86–88; Crenshaw, *supra* note 10, at 1253–58 (discussing suppression of domestic violence reports within the Black community due to a perception that they will harm the community politically).

⁷⁶ See COLLINS, *supra* note 54, at 167–68; PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS* 106–09 (2005).

⁷⁷ See COLLINS, *supra* note 54, at 66–67.

⁷⁸ See generally Niels Teunis, *Sexual Objectification and the Construction of Whiteness in the Gay Male Community*, 9 *CULTURE, HEALTH & SEXUALITY* 263 (2007) (presenting an ethnographic study of racial prejudice within San Francisco's gay male community); Ruth Butler, *Double the Trouble or Twice the Fun? Disabled Bodies in the Gay Community*, in *MIND AND BODY SPACES* 199, 202 (1999) (discussing ableism in the LGBT Community); Donald C. Barrett & Lance M. Pollack, *Whose Gay Community? Social Class, Sexual Self-Expression, and Gay Community Involvement*, 46 *SOC. QUART.* 437, 438–40 (2005) (discussing difficulties that working class gay men confront in fitting into the gay male community).

⁷⁹ RAFAEL M. DÍAZ, *LATINO MEN AND HIV: CULTURE, SEXUALITY, AND RISK BEHAVIOR* 127 (1998) (discussing homophobia in Latino cultures); GORDON, *supra* note 29, at 27–28 (discussing long history of xenophobia in the United States Labor Movement).

same themes. Thus, because most movement participants (like most individuals in the general population) are predisposed to overvalue the contributions of members who belong to socially privileged groups and undervalue the contributions of the less privileged, they are even more likely to accede to the demands of the privileged participants than they would be as a pure result of the clout that those participants enjoy outside the movement.

It is important to note, of course, that in spite of Group 5's dramatic increase in leverage under the assumptions of this model, it is still dependent on the collective power of the other groups. Group 5 cannot "go it alone": although it has special access to the instrumentalities of legal reform, the cost of independently mounting a campaign against even a single law would outweigh the benefits it might derive from such a change. It thus depends on the pooling of resources from Groups 1–4, just as the movements in *PART I* depended on a cost-sharing arrangement and quasi-contractual agreements to achieve their objectives. As such, Group 5 is still at least to some extent beholden to the wishes of Groups 1–4. But the dependency relationship, though mutual, is very asymmetric in Group 5's favor. Unless Groups 1–4 have another powerful ally who can take up their cause, Group 5 can probably stray quite far from those wishes without losing their funding and support.

These conclusions would likely come as little surprise to people who have been involved in progressive identity movements. Firsthand accounts of these movements abound with examples of the most socially privileged members' overwhelming domination of the movement's agenda and, by extension, its accomplishments. For example, several commentators have expounded on the tendency of the Civil Rights Movement and its modern offshoots to promote the interests of Black men at the expense of Black women and other more marginalized African Americans. Professor Kimberlé Crenshaw has explained that Black political movements

have typically required Black women to subordinate their own needs to the needs of Black men, ostensibly for the good of the community.⁸⁰ In part due to this myopic tendency of progressive race politics, the antidiscrimination regime introduced in Title VII of the Civil Rights Act of 1964⁸¹ does not acknowledge the intersecting forces of race- and gender-based prejudice on African American women.⁸²

Others have pointed out that Title VII can only do so much to improve the economic conditions of racial and ethnic minorities and women. For instance, the law's bar on discrimination in employment only applies to individuals who have a job to lose or who are qualified for a job they seek, which often requires education that is unavailable to the poor.⁸³ Thus, the Civil Rights Act has likely helped middle- and upper-class minorities and women gain and maintain professional status but is limited in its ability to help poor minorities and women. A similar critique applies to disability rights laws like the Americans with Disabilities Act of 1990.⁸⁴ Because these laws only recognize discrimination that is strictly based on disability, they do not require reasonable accommodations for needs that result from intersecting minority statuses, like disability and socioeconomic status. Several courts have held, for instance, that a

⁸⁰ See Crenshaw, *supra* note 65, at 161–63.

⁸¹ Pub. L. No. 88-352, 78 Stat. 241 (codified in scattered sections of 42 U.S.C.).

⁸² See *id.* at 150.

⁸³ As one commentator has put it:

Persons seeking employment bring with them the advantages and disadvantages, education and lack of education, skills and lack of skills that were acquired or not acquired in the formative years of their lives.

Title VII will not directly address racism, poverty, and associated social ills such as an inadequate education, family instability, welfare dependency, crime, inadequate housing and homelessness.

Ronald Turner, *A Look at Title VII's Regulatory Regime*, 16 W. NEW ENG. L. REV. 219, 287–88 (1994).

⁸⁴ Pub. L. No. 101-334, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12213 (2006 & Supp. 2010)).

landlord is not required to make an exception to an income requirement as an accommodation for a prospective tenant who cannot work due to a disability, as the tenant's lack of income is a condition of her socioeconomic status rather than her disability.⁸⁵

Critiques of the LGBT Rights Movement have struck a very similar chord, often drawing from these earlier accounts of the privilege-oriented agendas of the Civil Rights and Women's Movements.⁸⁶ In particular, commentators have argued that the Movement's narrow focus on legalization of same-sex marriage is skewed in favor of white, male, upper-class interests.⁸⁷ In particular, they argue (with empirical support) that white and upper-class gay people are more likely than minority and poor gay people to take advantage of marriage rights.⁸⁸ Furthermore, some contend that embracing marriage as an end in itself further marginalizes single people, single parents, and individuals in alternative family units, categories that disproportionately encompass the poor, racial and ethnic minorities, people with disabilities, and other historically marginalized groups.⁸⁹ And a feminist variation on this critique asserts that wholesale endorsement of the marriage agenda ignores the historical use of the institution of marriage to

⁸⁵ See *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998); *Sutton v. Piper*, 344 Fed. App'x 101 (6th Cir. 2009); *Schanz v. Village Apartments*, 998 F. Supp. 784, 791–92 (E.D. Mich. 1998).

⁸⁶ See, e.g., Hutchinson, *supra* note 14, at 1361 (using the term “intersectionality”); *id.* at 1362 n.16 (citing Kimberlé Crenshaw and others).

⁸⁷ See *id.* at 1369–72; Nitya Duclos, *Some Complicating Thoughts on Same-Sex Marriage*, 1 LAW & SEXUALITY 31, 59 (1991) (arguing that “legal marriage is going to help some and hurt some roughly according to existing rank of social power”).

⁸⁸ See Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 589–90 (1997).

⁸⁹ See NANCY POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE* 98–100 (2008).

subordinate women.⁹⁰ In spite of these internal reservations, same-sex marriage has come to overwhelmingly dominate the LGBT agenda.⁹¹

As these and other examples amply demonstrate, in spite of their progressive, equality-driven objectives, identity movements tend to replicate the values and hierarchies of mainstream society. And this tendency toward replication is likely a product both of the bargaining leverage that privileged participants gain by occupying a higher status in the mainstream culture and of the direct influence of mainstream hierarchies on the views of movement participants. By taking advantage of the social status they enjoy both outside and within the movement, the most privileged members of otherwise oppressed groups are able to control the movement's agenda without losing the support of the other participants.

It is important to emphasize that this analysis provides an explanation, not a justification, for the phenomenon of replication. In contrast, many observers of identity movements have instead offered a justification: crafting an agenda that challenges the mainstream status quo as little as possible is the most pragmatic strategy for bringing about incremental change.⁹² Put

⁹⁰ See Paula L. Ettelbrick, *Since When Is Marriage a Path to Liberation?*, OUT/LOOK, Fall 1989, at 9, 14–17, reprinted in CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW 683, 684 (3d ed. 2008).

⁹¹ See Schacter, *supra* note 16, at 382–83. Internal dissent persists, however, in spite of the appearance of consensus. See, e.g., June Thomas, *Don't Be a Wife: I'm a Lesbian and I'm Never Getting Married. Why Are You?*, SLATE (Nov. 29, 2012, 12:24 PM), available at http://www.slate.com/articles/double_x/doublex/2012/11/gay_marriage_i_m_a_lesbian_and_i_m_never_getting_married_i_don_t_want_to.html (“I wouldn’t have chosen marriage equality as a political priority . . .”).

⁹² One example is the recent controversy within the LGBT community over the Employment Nondiscrimination Act bill. See generally Recent Proposed Legislation, *Employment Discrimination—Congress Considers Bill to Prohibit Employment Discrimination on the Basis of Sexual Orientation and Gender Identity—Employment Nondiscrimination Act of 2009, H.R. 3017, 111th Cong. (2009)*, 123 HARV. L. REV. 1803 (2010). While some

differently, they contend that it is the content of the message, rather than the identity of the message's bearer, that accounts for the selection of identity-based campaigns that disproportionately benefit the most privileged members of minority communities. So far, the models analyzed in this paper have assumed that the costs of waging identity-based campaigns would vary only as a function of the extent to which the movement seeks to change the law, and not based on the content of those changes. Clearly, this is an oversimplification, as lawmakers and the general public are more resistant to some changes than to others. Perhaps, then, as the pragmatic justification implies, the legal changes that disproportionately benefit privileged groups are less costly than those that benefit less privileged groups. Under this reasoning, the skew of the movement's agenda, far from the inefficiency it is portrayed as here, is actually engineered to maximize benefits and minimize costs.

But this reasoning is suspect for a number of reasons. It assumes that changes to the law that would benefit less privileged members of identity groups are inherently more radical and less likely to gain public approval than those that benefit more privileged members. But the opposite may in fact be true, especially if the movement has been active for some time. Once a movement has achieved a number of victories on behalf of its most privileged members, further advances of a similar type may become increasingly hard won. The general public may be more likely to see additional demands beyond some threshold level as representing excessive or

argued that the legislation should protect transgender individuals, many — at one point including the Human Rights Campaign, a large LGBT Rights lobbying organization — opposed inclusion of gender identity protections on the basis that it would prevent the bill from passing. *See* Elizabeth M. Glazer, *Sexual Reorientation*, 100 GEO. L.J. 997, 1014–16 (2012). These participants defended their position as pragmatic and incrementalist. *See* Ian Ayres & Jennifer Gerarda Brown, *Mark(et)ing Nondiscrimination: Privatizing ENDA with a Certification Mark*, 104 MICH. L. REV. 1639, 1658 (2006) (quoting Representative Barney Frank).

“special” rights.⁹³ But for more marginalized members of the movement, significant initial improvements are yet to be made, so there may still be low-hanging fruit.⁹⁴ And on the benefits side of the equation, these marginalized members of the movement may possess so little social and cultural capital that they value incremental improvements in their quality of life much more than the privileged members would value those same improvements.⁹⁵

At times, there may be merit to social movement leaders’ assertions that targeting laws that disadvantage the least privileged participants is not politically feasible. But it is in part because these arguments are sometimes apt that they are so effective in quelling the internal conflict that might otherwise force the privileged groups to be more accountable to their less privileged constituents. Thus, it seems unlikely that pragmatism explains replication, at least in its entirety. Instead, much of the time, pragmatic rhetoric may be a powerful tool to reinforce replication when movement participants challenge it.

⁹³ See, e.g., Jeffrey R. Dudas, *In the Name of Equal Rights: “Special” Rights and the Politics of Resentment in Post-Civil Rights America*, L. & SOC. REV. 723, 726 (2005) (explaining the logic of “special” rights arguments).

⁹⁴ Many proposals for advancing the rights of intersectionally oppressed groups are targeted at promoting these individuals’ bodily integrity and other most basic needs. See, e.g., Libby Adler, *Gay Rights and Lefts: Rights Critique and Distributive Analysis for Real Law Reform*, 46 Harv. C.R.-C.L. L. Rev. 1, 15–18 (Amicus) (2011) (arguing that a productive goal for the LGBT Rights Movement would be legal intervention on behalf of LGBT homeless youth). Perhaps if identity movements actually adopted these types of modest proposals as their central platforms, they would not prove so difficult to accomplish.

⁹⁵ Cf. Ajay K. Mehrotra, *Envisioning the Modern American Fiscal State: Progressive-Era Economists and the Intellectual Foundations of the U.S. Income Tax*, 52 UCLA L. REV. 1793, 1852–53 (outlining a justification for the progressive income tax based on the idea that the wealthier a person is, the less she subjectively values her last, or marginal, dollar).

II.B: Purification

The foregoing account of identity movement dynamics does not in itself explain the exclusionary behaviors that many movement participants exhibit. Although commentators frequently speak of less privileged individuals' being "excluded" from identity movements, they are generally referring to a tendency to devalue or ignore these individuals' perspectives and experiences rather than rejecting their valuable contributions. It is not typically questioned, for instance, whether African American women actually *belong* in the Civil Rights and Women's Movements. It is just that because they lack social and political power, these movements need not be more than minimally accountable to them. Far from discouraging their participation, it takes their participation for granted.

Meanwhile, actual exclusion exists in many forms. Some middle- and upper-class African Americans have described feeling rejected by the Civil Rights Movement and its offshoots as a result of their socioeconomic status.⁹⁶ Members of the Disability Rights Movement have expressed suspicion toward individuals with mild or invisible disabilities who seek movement involvement.⁹⁷ The LGBT Rights Movement has historically been unwelcoming

⁹⁶ See Shelby Steele, *On Being Black and Middle Class*, COMMENTARY (1988), reprinted in THE BEST AMERICAN ESSAYS (1989); Leanita McClain, *The Middle-Class Black's Burden*, NEWSWEEK (Oct. 13, 1980), quoted in COLLINS, *supra* note 54, at 66.

⁹⁷ See, e.g., N. Ann Davis, *Invisible Disability*, 116 ETHICS 153, 155 (2005). To cite one example, participants in the autistic rights movement are often hostile toward potential new members who lack a formal diagnosis, even though formal diagnosis can be prohibitively expensive for those who missed out on diagnosis during childhood. See, e.g., MMADMIN, *Aspergers and Self Diagnosis—My Thoughts*, ASPIEWEB (Dec. 22, 2008), available at <http://aspieweb.net/aspergers-and-self-diagnosis/>.

toward bisexuals.⁹⁸ As we have seen, feminism-based movements have frequently shunned transgender women. These examples do not fall neatly into the replication paradigm: here, the individuals who are being rejected from a movement with which they purport to identify do not necessarily occupy a lower social status than those rejecting them. Instead, their interests diverge in some significant way, despite substantial overlap, from the set of interests that the movement's established agenda assumes. That divergence allows established members to allege that the newcomers do not authentically represent the community that the movement purports to champion. This phenomenon can be termed *purification*: the process by which a movement idealizes a set of personal characteristics that movement participants are expected to embody, and rejects potential members who do not exhibit those characteristics.

Once again, from the standpoint of the *PART I* model, purification makes little sense. Even if it is true that these potential members' interests are not perfectly aligned with those of established members, their substantial overlap in interests would make it mutually beneficial to join in concerted action. After all, social movement participants never have perfect uniformity of interests. And given the incentives that individuals generally have to free ride a movement rather than to participate actively, it seems odd that the established members would turn down eager contributions from potential new members. But understood from the perspective of the *PART II* model, in which preexisting social inequalities determine the dynamics of identity movements, purification may well accord with established members' self-interest. Because non-privileged movement participants do not have access to the channels of legal change, they have little direct influence on the movement's agenda. They therefore must seek alternative strategies for promoting their self-interest in the context of the movement. Often, this means asserting *indirect*

⁹⁸ See Jillian Todd Weiss, *GL v. BT*, 3 J. BISEXUALITY 27, 33–34 (2003).

influence, such as by preventing changes in the movement's membership that might affect the agenda in a manner adverse to these participants' interests.

Returning to the *PART II* model, in which Group 5 possesses a special x factor that allows it to be an ambassador between the movement and mainstream society, imagine that Groups 1, 3, 4, and 5 have agreed to form a movement that will advocate for changes in laws m , u , v , and q . Imagine one further wrinkle, in that the groups are now differently situated in the amount of value they will derive from changes in the various laws, as the chart below depicts:

Value Each Group Places on Changes in a Law				
Law	Group 1	Group 3	Group 4	Group 5
m	4 units	0	0	4 units
u	0	2 units	0	4 units
v	0	0	2 units	4 units
q	4 units	6 units	6 units	4 units

As a concession to Groups 1, 3, and 4, who know that their interests could be better served by a different agenda – and especially to Groups 3 and 4, who value changes to law q especially highly – Group 5 has agreed to prioritize law q . Only so many individuals belong to Group 5, after all, so no matter how many resources the movement compiles, Group 5 will only be able to pursue one reform at a time. Groups 1, 3, and 4 may be somewhat concerned that Group 5 will shirk, but since Group 5 would derive equal value from changes to any of the four laws, they believe that the small degree of accountability Group 5 owes them will be sufficient to keep Group 5 compliant with the agreed-upon agenda. The compromise is tenuous but promising.

Now imagine that a new group, Group 6, enters the scene, and that Group 6 is not affected by law q but would derive six units of value from changes to law m . Group 1, naturally, would be perfectly happy to allow Group 6 to join the movement, but Groups 3 and 4 are adamantly opposed. If Group 6 joins, it may try to persuade Group 5 to shift its focus toward changing law m , which would divert the movement's resources and disadvantage Groups 3 and

4. Groups 3 and 4 have very little influence over Group 5, but what influence they do have they must guard jealously, or else they may find themselves funding a movement that does not represent their interests at all. By allowing Group 6 to enter the movement, they would consent to a reduction of their intra-movement power. Instead of comprising two-thirds of the population to which Group 6 is accountable, they would comprise only one-half. And allowing Group 6 to join now will make it more likely that more new groups with disparate interests will join in the future, thereby further diluting the influence of Groups 3 and 4. Thus, even though Group 6's ability to share in the costs of the movement might benefit Groups 3 and 4 in the immediate future, they cannot take the longer-term risk of allowing the movement's agenda to fall completely out of their hands.

In contrast, if a new group that shared the interests of Groups 3 and 4 joined — say, a group that was only interested in changing law q — Groups 3 and 4 would welcome its participation. First of all, that new group would reinforce their influence within the movement rather than diluting it, as the groups that favor prioritization of law q would rise from two-thirds to three-fourths of the movement population. Second, the entrance of this sympathetic group would reduce the costs of Groups 3 and 4 in two ways: the new group would share in the overall costs of the movement, and it would also share in the costs of keeping groups with divergent interests out once it has established its membership. As this scenario illustrates, it is not their personal influence over Group 5 that the members of Groups 3 and 4 must defend. It is the primacy of their set of interests, which in identity movements are individual characteristics. Thus, it is in established members' interest to scrutinize carefully whether potential new members are *like them*, and to do everything within their power to exclude potential new members who are not.

In essence, introducing social inequality into this system has converted what could have been a mutually value-maximizing enterprise into a zero-sum game. It makes movement participants' fear of a hard limit to the progress that the movement can achieve⁹⁹ into a reality. But the limit does not emerge from mainstream society and its resistance to change, at least not directly. Instead, the progress of a movement is restricted by its reliance on the actions of the most privileged members to bring about the changes that the movement seeks. The number of movement participants with access to the instrumentalities of legal change is finite, and these participants are therefore limited in the amount of change they can effect. Thus, the limits to movement achievement are internal rather than external. Meanwhile, non-privileged members of the movement can invest their resources and energy into providing support to the privileged members, but these efforts will have diminishing returns. At some point, efforts devoted to purifying the membership of the movement become more likely to bear rewards. These efforts may create a culture of conformity within the movement that punishes even established members for deviating from the majority viewpoint.¹⁰⁰

The language of authenticity serves a useful function for the movement participants who take part in purification. Much like replicators' use of the language of pragmatism, it provides them with a philosophical justification for behavior that could otherwise be seen as morally

⁹⁹ See *supra* pages 20–22.

¹⁰⁰ See, e.g., Sarah Wheaton, *Republican and Lesbian, and Fighting for Acceptance of Both Identities*, THE NEW YORK TIMES ONLINE, Nov. 25, 2012, http://www.nytimes.com/2012/11/26/us/politics/lesbian-republicans-long-a-rare-political-breed-raise-their-profiles.html?_r=0 (stating, in interview with self-identified lesbian Republican, that “liberal lesbians react more negatively to her political views than conservatives do to her sexual orientation”).

objectionable. One study of dynamics within the Black community,¹⁰¹ for instance, documents how middle class African Americans are sometimes accused of not being “Black enough”¹⁰² by others of their race based on their style of speech,¹⁰³ style of dress,¹⁰⁴ place of residence,¹⁰⁵ taste in music,¹⁰⁶ or social involvement with Whites.¹⁰⁷ Professor Patricia Hill Collins has even theorized that homophobia within the Black community is in part rooted in the notion that departure from heterosexuality is a White phenomenon, so LGBT Black people are “less authentically Black.”¹⁰⁸ Meanwhile, many members of the LGBT Rights Movement justify their rejection of bisexuals in terms that resonate with the “Black enough” language of exclusion in the Civil Rights Context.¹⁰⁹ The logic implicit in this hostility is that these individuals are inadequate representatives of the minority group to which they seek alliance by virtue of not

¹⁰¹ Zenobia R. Edwards, *The Psychological and Social Effects of Not Feeling Black Enough* (March 1, 2010) (unpublished Ph.D. dissertation, Institute for Clinical Social Work), *available at* <http://ebookbrowse.com/edwards-zenobia-2010-the-psychological-and-social-effects-of-not-feeling-black-enough-pdf-d89544919>.

¹⁰² *Id.* at 1.

¹⁰³ *Id.* at 76.

¹⁰⁴ *Id.* at 86.

¹⁰⁵ *Id.* at 83.

¹⁰⁶ *Id.* at 105.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ See COLLINS, *supra* note 76, at 106.

¹⁰⁹ See, e.g., Nikki Dowling, *Bisexual or Lesbian — Please Make Up Your Mind* (Oct. 14, 2009, 9:42 AM), CNN LIVING, <http://www.cnn.com/2009/LIVING/personal/10/14/tf.dating.bisexual.woman/index.html>; Dan Savage, *Bisexuals* (June 22, 2011), *The Stranger*, <http://www.thestranger.com/seattle/bisexuals/Content?oid=8743322>; *Queers Are Slutty, Lesbians Are Boring* (March 22, 2012), DIARY OF A LIPSTICK TERRORIST, <http://lipstickterrorist.wordpress.com/2012/03/22/queers-are-slutty-lesbians-are-boring/> (discussing perceptions about how “[r]eal queers” are expected to look and act).

having suffered at the hands of the mainstream culture as much or in the same way as established members. Depending on the context, these individuals at the margins of identity boundaries are either seen as “faking” their identity-group affiliation¹¹⁰ or as trying to “pass” in mainstream culture to the detriment of the movement.¹¹¹

Somewhat ironically, this language of authenticity occasionally purports to reject potential new members on the basis of the societal privilege they enjoy. One of the justifications some participants in the Women’s Movement have used for excluding transgender women, for instance, is that transgender women have experienced and benefited from male privilege.¹¹² The LGBT Movement’s exclusion of bisexuals often relies on privilege-based arguments as well.¹¹³ This rhetoric may indicate that movement participants suffer from tunnel vision in their conception of social inequality, recognizing only that privilege that is wielded along the axis of the identity trait around which the movement is organized and ignoring all other types of privilege. Thus, a feminist might recognize the privilege that a transgender woman once enjoyed by virtue of being born male while failing to recognize the discrimination that she experiences by virtue of being transgender. But an alternative explanation may shed additional light on the phenomenon of purification: privilege-based rhetoric may be a psychological reaction to

¹¹⁰ See, e.g., RPGPundit, *What About Nerdopathic Pseudo-Aspergers?* (Feb. 16, 2010), Xanga, <http://rpgpundit.xanga.com/722019665/item/>.

¹¹¹ See Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002) (defining the concept of “passing” as where “the underlying [minority] identity is not altered, but hidden”); *id.* at 925–26 (applying the concept of “passing” to the contexts of race and gender); Savage, *supra* note 109 (“I’m sorry, bisexual activists, but . . . [i]nstead of berating me for my alleged bi-phobia . . . berate your closeted compatriots.”).

¹¹² See, e.g., JANICE G. RAYMOND, *THE TRANSSEXUAL EMPIRE* (2d ed. 1994).

¹¹³ See Weiss, *supra* note 98, at 38.

replication as well as a strategic one. In this conception, non-privileged movement participants are frustrated that the elite few control the movement's agenda, but they are dependent on those elite few and thus cannot lash out against them. Instead, they redirect their very legitimate frustration at potential members who have not experienced oppression in the same way that they have. They focus their justifiable anger on a less appropriate but safer target.

As this Part has demonstrated, exclusionary behaviors in identity movements are probably rooted not so much in irrational intolerance for human diversity as in an instinct for self-preservation. Movement participants who are not a part of the elite subgroup have very limited influence on a movement's agenda and must often resort to excluding potential members in order to preserve even this limited influence. But these actions artificially restrict movements' growth and cause rifts within identity communities, thereby limiting the extent to which identity movements are able to create beneficial changes to the laws and policies that adversely affect marginalized communities. Like replication, purification causes the incentives of individual movement members to diverge from the interests of the movement as a whole. Thus, any proposal for curtailing replication and purification must seek to bring these incentives back into alignment.

PART III: Recommendations

Social movements in general, and identity movements in particular, function best when they adopt egalitarian and inclusionary practices. *Part I.A* demonstrated that a healthy social movement will tend to adopt an agenda that maximizes value for its participants. *Part II.A* established that in general, the members of such a movement would prefer for many more individuals to participate — including individuals with different sets of interests — as more

participants means more people to share the costs of bringing about changes to unfavorable legal regimes. But social inequality interferes with these tendencies. When a select group within the movement has much greater access to the channels of legal change than its less privileged counterparts, that group becomes an agent for the rest of the movement. Because of the risk that the agent will be unfaithful, the movement is forced to allow that dominant group to control the agenda to a great extent. Then, to protect what little influence within the movement that is preserved for them, the more marginalized movement participants take actions intended to exclude potential members whose interests diverge from their own. As a result, the movement is artificially limited in both its membership and its accomplishments.

But like the model in *PART I*, the model in *PART II* is based on somewhat exaggerated assumptions. For one thing, it assumes that a small, elite group has a great deal of power to influence lawmaking and that all other movement participants have very little. Reality is probably more complex, as privilege is more of a continuous than a discrete variable. A more nuanced approach to allocating privilege within the movement would likely yield additional subclasses of participants with moderate amounts of influence on the instrumentalities of legal change. These moderately privileged participants would share some interests with those with little or no privilege and would have some ability to pursue these interests without the approval or aid of the most privileged group.

In fact, identity movements often exhibit patterns that suggest this kind of subgroup independence. Sometimes these subgroups even manifest as official, separate movements. The Black Feminist Movement, for instance, can be understood as an offshoot of both the Civil Rights Movement and the Women's Movement and has reacted to the failure of both of these

movements meaningfully to advance the interests of Black women.¹¹⁴ Similarly, the Lesbian Feminist Movement emerged under the umbrellas of both Gay Rights and the Women's Movement, but out of dissatisfaction with both.¹¹⁵ And the Disability Rights Movement encompasses smaller disability-based movements, such as the Deaf Civil Rights Movement¹¹⁶ and the Autism Rights Movement,¹¹⁷ each with its own unique philosophy and objectives. The coexistence of these subgroups with the bigger identity movements to which they relate, even if it is not always a peaceful coexistence, is an illustration of the *PART I* model at work. Rather than only vying for the affections of the elites within the larger movement, those with some lesser degree of privilege may simultaneously pursue their own interests by branching off of that larger movement. And often, individuals identify with and contribute to both the larger movement and the smaller movement, showing that the coalitions on which the *PART I* model is based remain in operation to some degree in spite of the effects of social inequality.

Furthermore, some movement strategies rely less on established privilege than others. Professor Jennifer Gordon's book about the Workplace Project, an immigrant-rights organization on Long Island that she founded, provides an interesting case study of this phenomenon. The Workplace Project was originally dependent on the involvement of Gordon, a self-described "white, middle-class lawyer with an elite education,"¹¹⁸ but her goal was to develop the project

¹¹⁴ See COLLINS, *supra* note 54, at 3.

¹¹⁵ See generally Verta Taylor & Nancy E. Whittier, *Collective Identity in Social Movement Communities: Lesbian Feminist Mobilization*, in WAVES OF PROTEST 169 (Jo Freeman & Victoria Johnson eds., 1999).

¹¹⁶ See generally JOHN B. CHRISTIANSEN & SHARON N. BARNARTT, DEAF PRESIDENT NOW! (1995).

¹¹⁷ See generally Andrew Solomon, *The Autism Rights Movement*, NEW YORK MAGAZINE (May 25, 2008), available at <http://nymag.com/news/features/47225/>.

¹¹⁸ See GORDON, *supra* note 29, at 75.

such that the working-class immigrant population it served could eventually run the project without her assistance.¹¹⁹ In order to achieve this shift in power, the Project originated with a “traditional approach,” in which the workers received standard legal services from attorneys,¹²⁰ but transformed into a forum in which immigrants could receive intensive training and support for their own structured activism.¹²¹ Gordon justifies this empowerment-focused approach on the basis of democratic ideals,¹²² but it could just as easily be defended as a technique for avoiding replication and purification and the destructive effects these tendencies have on identity-based movements. Similarly, accounts of the Occupy Wall Street movement demonstrate that a social movement can create headlines through tactics that do not rely on elite access.¹²³

Finally, the *PART II* model does not take into account the additional incentives that might steer privileged members away from the most self-serving courses of action. Identity movements often grow out of natural human communities, and as such, their members have strong social bonds. The most privileged members, even once they are in a position to advance their own interests, are often constrained by feelings of loyalty toward that community. They frequently depend on the less privileged movement participants for more than mere contributions to the movement, because the less privileged provide them with a great deal of social, emotional,

¹¹⁹ *Id.* at 112.

¹²⁰ *Id.* at 115.

¹²¹ *Id.* at 117–18.

¹²² *See id.* at 141–44.

¹²³ *See, e.g.,* Molly Crabapple, *Movement Story*, in *WE ARE MANY 20* (2012) (“Occupy was a participatory uprising. You didn’t have to speak leftist theory. You just had to cook food, or wash dishes, or donate books, or just be there—occupy.”).

and other types of intangible support.¹²⁴ The elite group may in turn accede to some of the less privileged members' requests, perhaps out of social convention or perhaps out of fear that the less privileged members will withdraw the intangible support they offer. Furthermore, close interpersonal ties may make it easier for the less privileged participants to monitor whether or not the elite members are actually performing agreed-upon duties, thus reducing agency problems. This scenario actually resembles the possibility, discussed above,¹²⁵ that less privileged groups could induce the elite group's participation in a more collectively favorable movement by sweetening the pot. The difference is that instead of direct payment, the less privileged group induces cooperation through subtle, intangible means. Although in the short run, these factors may do little to counteract purification, since the elite subgroup is still limited in its capacity to advocate legal changes, they may mitigate replication by making the movement's agenda less lopsided in favor of the most privileged participants.

These examples demonstrate that identity movements do not actually adhere perfectly to the *PART II* model, but instead exhibit a mix of characteristics from both models. In some ways, participants are dependent on an elite subgroup that is essentially self-serving, and this dependency has destructive effects on the movement. But in other ways, identity movements are able to break out of these dynamics and exhibit tendencies more characteristic of the model in

¹²⁴ See, e.g., COLLINS, *supra* note 54, at 87–88 (arguing that Black women are the “backbone” of African American churches and communities (quoting Jacquelyn Grant, *Black Women and the Church*, in *BUT SOME OF US ARE BRAVE* 141 (Gloria T. Hull et al. eds., 1982)); Nancy E. Stoller, *From Feminism to Polymorphous Activism: Lesbians in AIDS Organizations*, in *IN CHANGING TIMES* 171, 177 (Martin P. Levine et al. eds., 1997) (observing that lesbians were very active in AIDS organizations and often performed caregiving duties in the early days of the AIDS epidemic even though patients were primarily gay men).

¹²⁵ See *supra* page 30.

PART I. These observations are more than just comforting; they are crucial to understanding how the leaders and participants of an identity movement can shape the movement's dynamics such that it responds better to all constituents, is more inclusive of potential contributors, and ultimately effects greater change in the laws that serve to entrench social inequality.

Identity-based social movements striving to counteract replication and purification, then, should rely on tactics that do not require the participation of the most elite members whenever such tactics are both feasible and promising. That includes offering moral support to smaller branch movements, even if they break off based on philosophical differences. At times, however, relying on the special access of the elite groups is the most effective method of changing law and policy, in spite of its drawbacks. After all, many of the most significant accomplishments of identity movements have occurred through Supreme Court litigation, an avenue that is arguably one of the least accessible to the non-privileged.¹²⁶ In those situations, non-privileged participants should appeal to the sense of community and moral responsibility that often inspire selfless, rather than self-interested, action on the part of movement elites. And at all stages of organization, movement participants should attempt to foster community and social cohesion along with their political alliances.

Conclusion

Progressive changes in law and policy over the past century have relied critically on identity-based social movements, and they will likely continue to do so. Yet scholars and

¹²⁶ See, e.g., *Lawrence v. Texas*, 539 U.S. 558 (2003) (striking down a state law that criminalized same-sex sexual activities); *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (striking down a state law that established racial segregation in public schools).

activists have long recognized, albeit on a case-by-case basis, that these movements often perpetuate the many facets of social inequality that are unrelated to the ones they seek to alter. This paper has offered a unified theory to explain the process by which this perpetuation occurs. One might expect different oppressed groups to be natural allies, but this attractive ideal has rarely been borne out. Perhaps, though, a more thorough investigation into the mechanisms through which social movements function to silence sympathetic voices might help movements to curb these tendencies. After all, minimizing replication and purification in identity-based social movements is not merely a matter of fairness and moral legitimacy. For the movements that have a chance to dissipate the social inequality that pervades American law and politics, it is an issue that shapes their effectiveness, survival, and longevity.